

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/05/2001

CLERK OF THE COURT
FORM L513

HONORABLE MICHAEL D. JONES

T. Pavia
Deputy

LC 2001-000148

FILED: _____

STATE OF ARIZONA

THOMAS A ZAWORSKI

v.

SCOTT E SHEPPARD

ALEX D GONZALEZ

CHANDLER CITY-MUNICIPAL COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

APPEAL RULING / REMAND

CHANDLER CITY COURT

Cit. No. 135282; 00-P-854210

Charge: 1: ASSAULT/DV;
1: ASSAULT/DV;
2: DISORDERLY CONDUCT

DOB: 07-16-50

DOC: 08-21-99; 07-20-00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings before the Chandler Municipal Court and the Memoranda submitted by counsel.

Docket Code 513

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Appellant was charged in the Chandler Municipal Court with Assault, a class 2 misdemeanor in violation of A.R.S. Section 13-1203(A)(2), a domestic violence offense, and Disorderly Conduct, a class 1 misdemeanor in violation of A.R.S. Section 13-2904(A)(1). After a trial to the Court on February 28, 2001, Appellant was found guilty of both charges. Appellant was placed on two years supervised probation (monitored probation) and ordered to serve 10 days in jail for each count to be suspended if Appellant completed all terms of probation. Appellant filed a timely notice of appeal.

The first issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction of Disorderly Conduct. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

⁵ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

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Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

The second issue raised by Appellant concerns the propriety of the trial judge allowing Officer Melissa Moore, a Chandler Police Officer, to testify about excited utterances made by Lisa Carolan. Appellant timely objected to the proposed testimony and the trial judge allowed the prosecutor to lay appropriate foundation so that it was clear that Ms. Carolan's hearsay statements qualified as excited utterances under Rule 803(2).⁸ Clearly, Ms. Carolan's emotional state was due to the stress of the incident which had occurred prior to Officer Moore arriving.⁹ Ms. Moore cried during the entire time of her interview with Officer Moore.¹⁰ The incident had occurred approximately 20 minutes prior to the Police Officer's arrival.¹¹ It appears from the record that Officer Moore's testimony clearly falls within an excited utterance and was admissible.¹² This Court finds no error in the admission of Officer Moore's testimony concerning hearsay statements made by Lisa Carolan.

⁶ supra.

⁷ Id. At 553, 633 P.2d at 362.

⁸ Arizona Rules of Evidence

⁹ Reporter's transcript of February 28, 2001 at 26.

¹⁰ Id.

¹¹ Id. At 27

¹² See State v. Johnson, 183 Ariz. 623, 905 P 2d. 1002 (App.1995)

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IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Chandler Municipal Court.

IT IS FURTHER ORDERED remanding this matter back to the Chandler Municipal Court for all future proceedings.